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**Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples**

# Gibraltar

**Working paper prepared by the Secretariat**

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# I. General[1]

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.86 square kilometres, and according to Spain it is 4.8 square kilometres.

2. The latest census of Gibraltar, taken on 14 October 1991, assessed the Territory's civilian population at 26,703, of which 20,020 were Gibraltarians, 3,811 other British subjects, 1,798 Moroccans and 1,072 of other nationalities. The Gibraltar Statistics Office estimated the population in 1997 at 27,192.[2]

# II. Political developments

## A. General

3. The 1969 Constitution guarantees basic civil and political rights and attributes. It assigns responsibility for local matters to a local Government. The United Kingdom, however, retains power over matters of defence, external affairs and internal security. The Governor, appointed by the sovereign of the United Kingdom, retains the power to rescind laws passed by the legislature. Furthermore, the Constitution reserves for the sovereign full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking that Constitution). A new Governor, Mr. David Durie, replaced outgoing Governor Sir Richard Luce in April 2000. A detailed discussion about the 1969 Constitution, including the positions of Spain and the United Kingdom, is contained in the report of the Special Committee to the General Assembly at its twenty-fourth session.[3]

4. Legislative authority is vested in a single House of Assembly consisting of 15 elected members. Executive authority is vested in a Council, which is composed of the Governor, four ex officio members, the Chief Minister and four elected members, and which acts in an advisory capacity to the Governor. The Council of Ministers is made up of the Chief Minister, members of the House of Assembly designated by the Chief Minister, and some elected members. The Council of Ministers, which acts as a cabinet, holds responsibility for specific domestic matters, with the Governor retaining the prerogative to intervene in support of his responsibilities for defence and external affairs.

5. The legal system of Gibraltar is based on the common law and statute law of England. Gibraltar retains its own court system, which includes lower courts (Court of First Instance, Coroner's Court, Magistrate's Court), a court of appeals and a supreme court. The supreme court has unlimited jurisdiction to hear and determine any civil or criminal proceedings. At present, it consists of the Chief Justice and an additional judge appointed by the Governor.

6. In January 1999, the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, reaffirmed that the relationship between the United Kingdom and Gibraltar continues to be governed by the 1969 Constitution.

## B. General elections

7. The last general elections in Gibraltar were held on 10 February 2000. Approximately 80 per cent of the 18,621 registered voters participated. The incumbent Gibraltar Social Democratic Party (GSD) obtained 58.35 per cent of the vote, followed by the Gibraltar Socialist Labour Party/Liberal Party alliance (GSLP/Liberal) with 40.57 per cent, and independent candidates, with 1.08 per cent. Consequently, GSD won eight seats in the Territorial House of Assembly and the GSLP/Liberal alliance seven seats. Peter Caruana, leader of the Gibraltar Social Democratic Party, obtained 8,747 votes and was appointed Chief Minister of Gibraltar. The GSLP/Liberal alliance, led by Joe Bossano, forms the Opposition.[4] (*www.gibraltar.gi/election*)

## C. Recent developments

8. In March 1999, the United Kingdom Secretary of State for Foreign and Commonwealth Affairs issued a White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories" (A/AC.109/1999/1, annex), according to which the

relationship between the metropolitan government and its territories must be seen "within the overall framework of modernization and reform, and within Britain's new international role".

9. One of the Government's recommendations concerned the creation of an Overseas Territories Department within the Foreign and Commonwealth Office to ensure better links between the United Kingdom and its Territories. However, the paper indicated that because Gibraltar was within the European Union as part of the United Kingdom membership under the Treaty of Rome — the only Overseas Territory with that status — it would continue to be handled principally by the Foreign and Commonwealth Office's European Departments, reporting to the Minister responsible for Europe.

10. The Government of the United Kingdom launched a Strategic Defence Review in May 1997 to examine most areas of the United Kingdom's defence. The resultant White Paper placed renewed emphasis on the rapid deployment of British forces in response to crisis and pointed out that Gibraltar's facilities provided an independent forward operating base for British forces in the Mediterranean and served as a transit base for vessels en route to the Middle East and elsewhere. According to a report published in June 1999 by the Foreign Affairs Committee of the United Kingdom House of Commons, over the last 15 years, the level of military personnel in Gibraltar has declined from 10,000 to under 1,000, and civilian Ministry of Defence employees, from 15,000 to 1,200. Defence-related expenditure has declined from 70 per cent of gross domestic product (GDP) to 7 per cent.[5]

11. On 19 April 2000, Spain and the United Kingdom successfully concluded discussions to resolve certain difficulties which had arisen relating to Gibraltar authorities in the context of European Union and European Community instruments and related treaties.[6] As a result, formal communications and decisions to be notified between Gibraltar authorities and those in other member States under European Union legislation will be conveyed through a unit established in the Foreign and Commonwealth Office in London. The arrangement, which also covers issues of documentation, finance and police cooperation, clears the way for the passage of stalled European Union legislation. It was also agreed that "these arrangements or any activity or measure taken for their implementation or as a result of them do not imply on the side of the Kingdom of Spain or on the side of the United Kingdom any change in their respective positions on the question of Gibraltar or on the limits of that territory."

# III. Economic conditions

## A. General

12. Gibraltar has no known natural resources and lacks agricultural land. The industries, trades and services in the Territory mainly supply the needs of its population and the large number of visitors to the Territory. The economy of Gibraltar is largely dependent on tourism and the provision of financial services such as banking, insurance, shipping and portfolio management.

13. The latest available estimate for national income relates to 1995/96, when per capita GDP was 116.80 pounds sterling. Inflation in October 1999 was running at an annual rate of 0.2 per cent.

## B. Public finance

14. According to the administering Power, departmental revenue credited to the Consolidated Fund for the year ending on 31 March 1999 totalled £131 million, whereas departmental expenditure amounted to £93.9 million, compared with £76.4 million and £60.1 million, respectively, in March 1997. The main sources of Consolidated Fund revenues were income tax, which totalled £47 million; import duties, which totalled £24.9; and general rates, which totalled £10.9 million.

15. On 31 March 1999, the public debt of Gibraltar stood unchanged from 1997 at £61.4 million. Expenditures from April 1998 to March 1999 were as follows: education, youth, culture and consumer affairs, £14.5 million; environment and health, £13.6 million; electricity, £9.3 million; police, £6.9 million; tourism and transport, £6.2 million; treasury, £5.9 million; secretariat, £5.7 million; building and works, £5.6 million; support services, £3.3 million; customs, £2.6 million; fire service, £2.3 million.

16. Income tax is charged on income accruing in, derived from or received in Gibraltar by any person or company. It is also charged on dividends, interest and

emoluments of office accruing in, derived from or received in any place outside Gibraltar by any person ordinarily resident in Gibraltar, but when that income is taxed in the country of accrual and is not received in Gibraltar, it is exempt. The rates applicable to individuals resident in Gibraltar range from 20 per cent on the first £1,500 of taxable income to 50 per cent after the first £19,500.

## C. Trade

17. In 1997, total imports were £300,210,000, including £26,397,000 in foodstuffs and £22,825,000 in manufactured goods. Total re-exports were £49,528,000, including £30,330,000 in machinery and transport equipment. Principal re-exports included petroleum products, manufactured goods, wines, spirits, malt whisky and tobacco. Over one third of Gibraltar's non-fuel imports originated from the United Kingdom. Other sources of imports included Japan, the Netherlands and Spain. Exports of goods of local origin were negligible. Exports consisted mainly of re-exports of petroleum and petroleum products supplied to ships.

18. Import controls did not change during the period under review. Other than a few items of essential foodstuffs, gold, jewellery, petrol, caravans, and endangered species, all goods can be imported under the Open General Licence.

## D. Banking and finance

19. There were 25 banks authorized to conduct banking business in Gibraltar at the end of 1999. The banking sector serves offshore and local customers and has balance sheet footings of over £6 billion. According to the administering Power, Gibraltar is required to implement all European Community directives related to financial regulation. Gibraltar has made a commitment not only to implement the necessary measures to the minimum standard required within the European Union, but also to match United Kingdom standards of financial regulation.[7] In that regard, the Government of Spain on several occasions has expressed concern that European Union directives have not been fully implemented in Gibraltar and has disputed information by the administering Power to the contrary. In February 1999, the United Kingdom submitted information to the European Union regarding the number of measures that had been implemented in Gibraltar (39), those that were inapplicable (31) and those that were in the "final stages of transposition" (8). In July 1999, the European Commission decided to refer the United Kingdom to the European Court of Justice for four cases of failure to implement in the Territory of Gibraltar the 4th and 7th Company Law Directives, requiring offshore companies to publish their accounts.[8] According to the administering Power, on 15 October 1999, the Gibraltar House of Assembly adopted the necessary primary legislation to bring into effect the two directives, a step which was notified to the European Commission.

20. As at 31 December 1999, there were approximately 8,300 fully paid companies registered under the Companies (Taxation and Concession) Ordinance. Companies registered under the ordinance pay a fixed annual tax, irrespective of profits made and regardless of whether these profits are received in the Territory. The exemption covers dividends, interest, directors' fees and annual payments made to non-residents. Unless otherwise authorized, the company must not carry on trade or business in Gibraltar or in the United Kingdom and no Gibraltarian or resident of Gibraltar may have any beneficial interest in the company's shares.

## E. Transportation, communications and utilities

21. Road transportation in and out of Gibraltar along the isthmus linking the Territory to Spain was disrupted in early 1999. In February 1999, Spain increased controls at its border post with Gibraltar. According to press reports, the Foreign Ministry of Spain announced that it would maintain the border controls until Gibraltar applied European Union directives to impede tax evasion, drug trafficking and money-laundering (see para. 47 below). The controls caused delays of up to six hours for vehicle traffic at the border. According to press reports, the United Kingdom submitted a complaint on the matter to the European Commission. A spokesman for the European Commission stated that there were no limits in the European Union's legislation regarding external border controls.

22. The total length of roads in the Territory is 26.75 miles (about 43.04 km). The roads are reported to be in good condition and suitable for vehicular traffic. Five bus routes serviced by 18 buses maintain communication in the Territory. The total number of

registered vehicles as of 31 December 1999 was 31,349.

23. Airline services to Gibraltar have recently increased. In addition to the scheduled flights to the United Kingdom, a Casablanca-Gibraltar route was inaugurated on 2 November 1999.[9] Airmail is dispatched to London, and via London to all destinations worldwide, six times a week by direct flights. Surface mail to and from the United Kingdom is received and dispatched five times a week.

24. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships. It has dry-dock facilities and a commercial ship repair yard. Tax concessions are available to shipowners who register their ships at Gibraltar. At the end of 1996, there were 23 vessels with a combined weight of 305,593 gross registered tonnage registered in Gibraltar, of which 21 were merchant vessels. According to the Territorial Minister for Tourism and Transport, the ships calling at the Territory in 1998 represented a combined registered tonnage of over 117 million gross tonnes. That figure was expected to rise to 125 million tonnes during 1999.[10]

25. The Government of Gibraltar in December 1999 published a policy paper entitled "The Port of Gibraltar: Beyond 2000" with the aim of increasing revenue from existing port activities, generating new business and creating a Port Authority which would replace the existing Port Department and be self-financing within three years. [11]

26. The local telephone system is operated by Gibraltar NYNEX Communication Ltd., a joint venture company owned by the Government of Gibraltar and Bell Atlantic. International telecommunications are operated by Gibraltar Telecommunications International Ltd. (Gibtel), a joint venture of the Government of Gibraltar and British Telecom.[12] At the end of 1999, the total number of exchange lines was 21,916, a net increase of 1,536 over the previous year.

27. The Electricity Department is responsible for the supply of electricity for civilian use in the Territory. The Ministry of Defence operates a separate undertaking to meet defence requirements. During 1999, maximum electricity demand was 23,100 kilowatts and a total of 120,063,566 kilowatt-hours were generated. Gibraltar is dependent on imported petroleum for its energy supplies.

### F. Tourism

28. The total number of tourist arrivals in 1999 was 6.1 million, compared to 6.7 million in 1998. Hotel arrivals in 1999 were 42,031. There are an estimated 2,000 hotel beds in Gibraltar. The Ministry of Tourism and Transport has introduced a policy for increasing the amount of cruise ships that visit the Territory. According to the Minister, as of November 1999, 218 cruise calls had already been booked for Gibraltar during 2000 and more were expected.[13]

## IV. Social and educational conditions

### A. Labour

29. According to the latest employment survey, the number of employees in Gibraltar was approximately 13,000. The total number of unemployed persons at the end of 1999 was estimated at 446.

30. In April 1998, average weekly earnings for full-time workers in the Territory were £233.03. At the end of 1999, the distribution of persons employed by the five largest sectors was as follows: banking and finance, £2,027; public administration and defence, £2,041; retail trade, £1,755; building and construction, £1,224; and medical and health service, £788.

31. Legislation regulating labour and employment conditions in the Territory is reported to be in line with European Union directives. The Trade Unions and Trade Disputes Ordinance of Gibraltar contains provisions similar to those in the United Kingdom for the registration and organization of trade unions. As of December 1995, 20 trade unions were registered in the Territory.

### B. Human rights and the status of women

32. The Gibraltar (Constitution) Order of 1969 guarantees the protection of the fundamental rights and freedoms of the individual and the maintenance of a Supreme Court with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with such jurisdiction and powers as are

conferred upon it by the Constitution of Gibraltar or any other law.

33. Several major international human rights instruments have been extended to the Territory by the administering Power. These include the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

34. The status of women in Gibraltar, whether married or single, with or without family responsibilities, is similar to that enjoyed by women in the United Kingdom. The Social Security (Insurance Ordinance) of Gibraltar provides for the payment of a variety of benefits and allowances to expectant mothers and widows.

35. On 18 February 1999, the European Court of Human Rights determined by a vote of 17 to 2 that, with regard to Gibraltar, the United Kingdom had violated article 3 of Protocol 1 of the European Convention on Human Rights, concerning the right to participate in European parliamentary elections. The proceedings had been initiated by a citizen of Gibraltar who, upon applying to register as a voter in the European parliamentary elections in 1994, had been told that, under the terms of the European Community Act on Direct Elections of 1976, Gibraltar was not included in the franchise. The Court ruled that article 3 of Protocol 1 applied to Gibraltar and that the United Kingdom was responsible for securing the rights guaranteed by it.

36. In response to questions posed about the ruling in the fourth report of the Foreign Affairs Committee, in October 1999, the Secretary of State for Foreign and Commonwealth Affairs stated the following:

> "The Government have consistently made clear their intention to comply with the judgement of the European Court of Human Rights and ensure that the people of Gibraltar gain the right to vote in European Parliamentary elections. We have alerted European Union partners to the Court's judgement and tabled a proposal on 16 March 1999 which is currently under discussion in Brussels. The Government are working hard to ensure that this extension of the franchise to Gibraltar is achieved before the 2004 European elections."

## C. Environment

37. In 1996, the Environmental Health Department, which was a territorial government department, ceased to exist. The functions formerly carried out by the Department have been transferred to a fully privatized Environmental Agency. The chief Environmental Health Officer is responsible for the overall operation of the Environmental Agency and is answerable to the Minister for the Environment and Health.

38. The Nature Protection Ordinance (1991) protects Gibraltar's terrestrial and maritime life and provides for the creation of nature reserves such as that declared on an area of the Upper Rock. The United Kingdom has ratified a number of environmental conventions on behalf of Gibraltar. The Control of Trade in Endangered Species Ordinance (1998) complies with international and European Union regulations. The European Habitats Directive has been implemented and the designation of sites under the Natura 2000 programme is in progress.

## D. Housing

39. According to reports of the administering Power, the Government of Gibraltar has pursued a policy of increased home ownership both to alleviate the housing shortage and to reduce the burden of increasing repair and maintenance costs for its rented accommodations. Home ownership in Gibraltar has increased from a level of 6 per cent in 1985 to 25 per cent in 1994, and to approximately 34 per cent in 1999. At the end of 1999, the government housing waiting list contained 570 applicants, compared with 500 at the end of 1997.

## E. Social welfare and assistance

40. The Social Security (Non-Contributory Benefits and Unemployment Insurance) Ordinance covers entitlement and payment of unemployment benefits to unemployed persons previously in employment. Payment of such benefits is financed from the weekly contributions by employers and employees to the Social Insurance (short-term benefit) Fund. The

standard weekly rate of unemployment benefits is £37.20, with an increase of £18.20 per week for any additional dependent adult. During 1999, 655 claims for unemployment benefits were processed and 601 requests were granted.

## F. Public health

41. The Gibraltar Health Authority is responsible for providing health care in the Territory. The Authority operates a group practice medical contributory scheme and gives registered persons access to free medical treatment.

42. St. Bernard's Hospital, with a total of 166 beds, provides comprehensive out-patient services and in-patient treatment for acute medical and surgical cases. It also has a maternity section and two wards for elderly patients. The King George V Psychiatric Unit has 60 beds and provides diverse types of psychiatric treatment, including in-patient and out-patient services. In September 1999, a new primary health centre housing general practice surgeries opened to replace the existing territorial Health Centre.[14]

43. According to press reports, Gibraltar has 90 registered medical practitioners in the Territory. These include 56 doctors, 14 dental practitioners and 20 pharmacists. A Medical Registration Board was established as a result of the Medical and Health Ordinance of 1997. The Board monitors the annual registration of medical specialists wishing to practice in Gibraltar. A programme of visits by consultants from the United Kingdom covers specialties such as paediatric neurology, cardio-thoracic surgery and plastic surgery.

44. During 1995/96, total public health expenditures amounted to £20.67 million, compared to £19.9 million in 1994/95.

## G. Public education

45. The Education Department continues to be in charge of public education in Gibraltar. Expenditure on education as at the end of March 1999 was £13.98 million (or 12.1 per cent of the total). A programme of major improvements to government schools was completed in 1999 at a cost of £1.14 million.

46. In 1999, there were 13 primary schools (one of them private) enrolling 3,356 students, and two secondary schools enrolling 1,794 students. There is also a technical and vocational college with 198 enrolled students. The number of teachers employed in Gibraltar during the 1999/00 academic year is 354. In addition, 628 Gibraltarians are pursuing university studies in the United Kingdom.

## H. Crime and crime prevention

47. The White Paper (see para. 8 above), under the heading "Encouraging good government — combating drug trafficking and drugs-related trade", noted legislation enacted by the local Government in Gibraltar in 1995 and 1996 that banned Gibraltar-based fast boats. According to information supplied by the administering Power, the activities of Gibraltar-based fast boats and rigid inflatables had been effectively eliminated and illicit trafficking involving Gibraltar had ceased to be a problem. During the period under review, the Government of Spain continued to express concern at what it considers to be the use of Gibraltar for laundering proceeds from drug trafficking or other illicit activities. The administering Power has pointed out that Gibraltar has introduced money-laundering legislation meeting United Kingdom and European Commission standards.

48. The administering Power reported 1054 minor offences (such as those related to liquor, disorderly conduct and firearms violations) and 768 arrests for minor offences in 1999, down from 1095 offences and 921 arrests in 1998. Also reported for 1999 were 2035 serious crimes (such as those related to violence against the person, sexual offences, burglary and drugs), down from 2706 reported serious crimes in 1998.

# V. Consideration by the United Nations

## A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

49. The Special Committee considered the question of Gibraltar during the fifty-fourth session of the General Assembly at its 3rd meeting, on 21 June 1999, and had before it a working paper concerning the Territory (A/AC.109/1999/5). The Special Committee heard a statement made by the Chief Minister of Gibraltar, Peter Caruana. In addition, in accordance with a decision taken at the outset of the meeting, a statement was made by William Serfaty, on behalf of the Self-Determination for Gibraltar Group. The Special Committee acceded to the request of the delegation of Spain to participate in the Committee's consideration of the question of Gibraltar. The representative of Spain made a statement at the meeting.

50. At the same meeting, the Special Committee decided to continue its consideration of the question at its next session, subject to any directives that the General Assembly might give in that connection at its fifty-fourth session and, in order to facilitate consideration of the question by the Fourth Committee, to transmit the relevant documentation to the Assembly.[15]

## B. Special Political and Decolonization Committee (Fourth Committee)

51. At its 4th meeting, on 5 October 1999, the Fourth Committee heard a statement by the Chief Minister of Gibraltar, Peter Caruana (see paras. 56-66 below) and a statement by petitioner Joe Bossano of the Gibraltar Socialist Labour Party.[16] At its 6th meeting, on 7 October, the Committee heard a statement by the representative of Spain (see para. 68). At the same meeting, the representative of United Kingdom spoke in exercise of the right of reply.[17]

52. At its 7th meeting, on 8 October 1999, the Committee had before it a draft decision entitled "Question of Gibraltar",[18] submitted by the Chairman. At the same meeting, the Committee adopted the draft decision without a vote.[19]

## C. Action by the General Assembly

53. At its 71st plenary meeting, on 6 December 1999, the General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted decision 54/423 without a vote. The decision read as follows:

> "The General Assembly, recalling its decision 54/420 of 3 December 1998, and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, *inter alia*, the following:
>
> > "'The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution',
>
> takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and of the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each capital, the most recent of which was held in London on 10 December 1997, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."[20]

# VI. Future status of the Territory

## A. Position of the administering Power

54. At the 7th plenary meeting of the General Assembly at its fifty-fourth session, on 21 September, the representative of the United Kingdom, in exercise of his right of reply, [21] stated:

> "British sovereignty over Gibraltar was clearly established in the Treaty of Utrecht. This legal fact is incontrovertible. Moreover, the British Government stands by the commitment to the people of Gibraltar contained in the preamble to the 1969 Constitution of Gibraltar, which states that the United Kingdom will not enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes.
>
> "The British Government believes that issues relating to Gibraltar can be resolved only by direct talks, such as those established under the 1984 Brussels Declaration. In that regard, we attach importance to continuing the dialogue with Spain as a means to overcoming our differences."

55. The above position was reiterated by the representative of the United Kingdom speaking in exercise of the right of reply at the 6th meeting of the Fourth Committee, on 7 October 1999.[22]

## B. Position of the territorial Government

56. At the 4th meeting of the Fourth Committee, on 5 October 1999, the Chief Minister of Gibraltar, Mr. Caruana, said that the essence of the Gibraltar issue was simple enough: Spain claimed from the administering Power, the United Kingdom, the return of sovereignty over Gibraltar, which Spain had ceded to Great Britain in 1713 under the Treaty of Utrecht. The people of Gibraltar, for their part, asserted their right to self-determination enshrined in the Charter of the United Nations for the benefit of all colonial peoples.

57. Spain's position was based on two fundamental principles which were misconceived or inapplicable. First, Spain contended that, in the matter of the decolonization of Gibraltar, the governing principle should be, not the principle of self-determination, but the principle of territorial integrity, which existed in the doctrine of the United Nations in the context of decolonization.

58. The application of the principle of territorial integrity would, according to Spain, require the transfer of sovereignty over Gibraltar by the United Kingdom to Spain, contrary to the unanimous wishes of the people of Gibraltar. This was a curious proposition between three democracies. Spain's references to two or three General Assembly resolutions adopted in the 1960s were also irrelevant and amounted to an attempt to distort their meaning. In fact, what those resolutions did was assert the indisputable doctrine that the principle of self-determination was not applicable to the people of a territory which formed a constituent part of a Member State to enable them to secede from that State. Gibraltar, however, had not been a part of Spain for 295 years and was thus not seeking to secede from Spain. The principle of the non-disruption of territorial integrity was therefore not applicable in the case of Gibraltar.

59. The United Nations doctrine, reaffirmed in the omnibus resolution on decolonization which was adopted every year, was that in the decolonization process there was no alternative to the principle of self-determination. Consequently, the principle of territorial integrity was in no way applicable to the process of the decolonization of Non-Self-Governing Territories. In that connection, it should be emphasized that Gibraltar was a colony since it was on the United Nations list of the remaining Non-Self-Governing Territories. In the case of Namibia, the International Court of Justice had held that international law in regard to Non-Self-Governing Territories as enshrined in the Charter of the United Nations made the principle of self-determination applicable to all of them. In calling Gibraltar a "colonial enclave", Spain sought in vain to suggest that there was a special doctrine relating to the decolonization of such enclaves. The general principles of self-determination and decolonization remained unalterable, whatever semantic labels might be used. It was interesting to note that, in the case of its own enclaves, Ceuta and Melilla, to which Morocco laid claim, Spain made unjustified attempts to draw a distinction between their status and the status of Gibraltar.

60. The second of Spain's fundamental propositions was that the right of the people of Gibraltar to self-determination had been denied by the Treaty of Utrecht

of 1713, under which Spain had the first option to Gibraltar if Great Britain were to alienate sovereignty over it. Even if the Treaty could be interpreted in such a way, given the current principles of international law, there would be no grounds for denying the people of Gibraltar the right to self-determination.

61. In an attempt to discredit the people of Gibraltar, Spain systematically made statements which were untrue or irrelevant. It contended, *inter alia*, that the people of Gibraltar (whom it referred to as "inhabitants") were not indigenous and were therefore not a colonized people. There was, however, no principle that self-determination was available only to "indigenous peoples". If there had been, many former colonies would not now be sovereign independent States. The Charter of the United Nations granted the right of self-determination to the people of Non-Self-Governing Territories.

62. Gibraltar currently enjoyed a large measure of self-government. It had its own elected parliament and Government and had considerable political and administrative autonomy. Gibraltar was totally self-sufficient economically. Far from being a parasite on Spain, it gave employment to over 2,000 Spanish workers. He once again urged representatives of the United Nations to visit Gibraltar to ascertain that what he had said was true.

63. In his address to the General Assembly, Mr. Matutes, the Foreign Minister of Spain, had said that Spain had submitted a proposal to the United Kingdom that took into account the interests of the people of Gibraltar. The so-called "Matutes proposals" provided for the inevitable transfer of sovereignty to Spain after a transitional period during which the United Kingdom and Spain would exercise joint sovereignty over the Territory. That was totally unacceptable to Gibraltar. Gibraltar was currently neither Spain's to claim nor the United Kingdom's to give away. Only the people of Gibraltar themselves could determine their own political future. Then United Kingdom had rejected those proposals as contrary to the wishes if the people of Gibraltar, and Spain now stated that the proposals should be regarded as a "starting point". That was positive if it meant that Spain was able to seek a solution to the issue which would be in accordance with the wishes of the people of Gibraltar.

64. Gibraltar was not afraid of a dialogue with Spain. The Government of Gibraltar was committed to the principle that a dialogue with an open agenda was the only constructive way to move forward in resolving the existing problems and establishing a basis for a viable relationship between Gibraltar and Spain based on friendship, cooperation and mutual respect. However, any dialogue on the future of Gibraltar must be on the basis of the overriding principle that the people of Gibraltar had the right freely to decide their own future. The question of the decolonization of Gibraltar in accordance with the principles of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples could not, by definition, be decided on the basis of a bilateral resolution of differences between the administering Power and a third-party territorial claimant.

65. For its part, Gibraltar could not stand still. It did not accept that its options were to remain a colony of the United Kingdom or to become part of Spain. Gibraltar would achieve decolonization through the exercise of its right to self-determination, by a process of reform and the modernization of its current Constitution. To that end, a Select Committee on Constitutional Reform had recently been established to draw up appropriate proposals which would be submitted to the United Kingdom and which could put an end to the colonial status of Gibraltar in a manner acceptable to the people of Gibraltar.

66. The position of the United Nations with regard to Gibraltar was unclear when it spoke of the "eradication of colonialism": he wondered whether it advocated the handing over of Gibraltar to Spain despite the unanimous wishes of its people, or whether it intended to promote the exercise of Gibraltar's right to self-determination. Only the latter was consistent with the mandate of the Special Committee on Decolonization.[23]

## C. Position of the Government of Spain

67. At the 7th plenary meeting of the General Assembly, on 21 September 1999, Mr. Abel Matutes, Foreign Minister of Spain, stated:

> "At the conclusion of this Decade for the Eradication of Colonialism, my country continues to endure the presence of a colonial enclave on its territory. Gibraltar was occupied by British troops in 1704, during one of the European wars of succession. The Territory was turned into a military base and the Spanish population was

expelled. Until very recently Spanish citizens in Gibraltar suffered grave discrimination in the exercise of their rights."

"General Assembly resolution 2353(XII) backed the Spanish views on the decolonization of the Territory, recognizing that Gibraltar's colonial situation should be settled not through self-determination, but, rather, through the restoration of Spanish territorial integrity. Unfortunately, its terms have been ignored by the colonial Power. Spain and Great Britain began a process of negotiation on all the issues, including sovereignty, based on the 1984 Brussels Declaration, but no significant progress has been made. Spain has made a proposal to the United Kingdom that takes into account the interests of the inhabitants of the colony and would allow for the recovery of sovereignty over the Territory after a lengthy period, so far without reply. My Government will continue both its dialogue with the United Kingdom and cooperation with the decolonization Committee in following up on this issue".[24]

68. At the 6th meeting of the Special Political and Decolonization Committee (Fourth Committee), on 7 October 1999, the representative of Spain spoke on the question of Gibraltar and said, *inter alia*:

"That the principle of territorial integrity is fully applicable to the decolonization of Gibraltar is not an argument made by Spain alone. There is a very clear, established and unequivocal doctrine of the United Nations on the question of Gibraltar, namely, that the decolonization of Gibraltar is implicit in restoring the territorial integrity of a State, and on that basis the United Kingdom is urged to end the colonial situation of Gibraltar.

General Assembly resolution 1514 (XV) of 14 December 1960 stipulated that: 'Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.'

This principle was subsequently reiterated by General Assembly resolution 2625 (XXV) of 24 October 1970, which reaffirmed the incompatibility with the purposes and principles of the Charter of any attempt aimed at the partial or total disruption of the territorial integrity of a State. On that basis, successive General Assembly resolutions have established that the principle of territorial integrity is fully applicable to the decolonization of Gibraltar. Among others, resolution 2429 (XXIII) of 18 December 1968, which, like resolution 2353 (XXII) of 19 December 1967, specifically concerns the question of Gibraltar, urged the administering Power to terminate the colonial situation in Gibraltar and reaffirmed that the continuation of the situation is incompatible with the Charter of the United Nations.

There is thus a need for greater exactitude when citing precedents before this Committee, be they decisions of the International Court of Justice or resolutions of the General Assembly. I will refer to the latter, which are best known to the delegates.

It is true that the 'omnibus' resolution speaks of the right of peoples to self-determination, but section A, paragraph 1, immediately qualifies and limits that right by stating that it must be 'in conformity with the Charter of the United Nations and with General Assembly resolution 1514 (XV)', a resolution which, as we know, establishes the principle of territorial integrity with respect to decolonization.

A supposed modernization or reform of the so-called 'constitution' of Gibraltar granted by the United Kingdom in 1969 would only aggravate the problems, rather than resolve them.

We want no one to be able to claim that they were misled. Spain will oppose any attempt which, by cheating the Treaty of Utrecht, the Brussels negotiating process between Spain and the United Kingdom, the doctrine of the United Nations and the annual decisions of the General Assembly, prevents or hinders the result envisaged in the reversion clause established at Utrecht. Although the formal tie of dependency might be maintained with the United Kingdom, the transfer of powers to the local authorities might void the sovereignty held by the administering Power (with respect to the Rock of Gibraltar itself, not the illegally occupied isthmus) of any real content.

In the Treaty of Utrecht, Spain ceded sovereignty over Gibraltar to the United Kingdom. The cession was not voluntary on the part of Spain but was forced upon it. Nevertheless, *pacta sunt servanda*; Spain has always complied with the Treaty of Utrecht, even though it implied the break-up of our national unity and territorial integrity. The validity of the Treaty is recognized by the United Kingdom, Spain and the United Nations. The Treaty of Utrecht and its clauses, including the provisions of article X, are applicable. In conclusion, Gibraltar may be British or Spanish, but any other option is excluded.

Spain has deep respect for the rights of Gibraltarians as citizens. Nevertheless, it does not perceive them as a nation with sovereign rights. Insofar as sovereignty over the territory of Gibraltar is concerned, there are only two sovereignties in question: that of the United Kingdom, as the colonial Power, and that of Spain, since the colony is established on Spanish territory.

Gibraltar lacks natural resources and agricultural land. Its economy, formerly dependent on the United Kingdom military base, is now based on its unusual and privileged position within the European Union, since it is exempt from, *inter alia*, the value-added tax and is outside the Customs Union. Those advantages, combined with the opaqueness of its financial system, have turned it into a 'parasite' economy living on and at the expense of Spain and depressing the neighbouring areas of Spain.

Spain is the first to desire an economic boom and prosperity for the inhabitants of Gibraltar, but its economy cannot be built on flawed foundations. Gibraltar needs to build a sound and unified economy, one that is fully compliant with European Union directives and regulations and that does not accommodate either illegal trafficking or the financial opaqueness which facilitates harmful tax-based competition and has a very adverse impact on Spanish interests, including public finance.

Every year the General Assembly renews its calls for Spain and the United Kingdom to overcome all the differences between them over Gibraltar, including issues of sovereignty, through bilateral negotiations in the light of the relevant resolutions and in conformity with the spirit of the Charter of the United Nations.

Formal negotiations between Spain and the United Kingdom take place in the context of the so-called Brussels process, which began in 1984. Spain has participated in it in good faith, in a generous, brave and constructive spirit, offering two proposals — not as positions set in stone, but as a starting point for negotiations — in an effort to resolve the Gibraltar dispute. The last of these proposals dates from 1997. Despite the good will shown by successive Spanish Governments, 15 years after it began the Brussels process has not yielded any progress.

We have only one course open to us, namely, serious negotiations, which would necessarily end the colonial situation of Gibraltar, since the maintenance of the status quo benefits no one. Spain continues to place firm faith in dialogue.

The Gibraltarians have nothing to fear from that dialogue. Let me remind you that the Spanish authorities have expressed on many occasions their full willingness to ensure due respect for the legitimate interests of the inhabitants of Gibraltar and their particular identity and characteristics.

We are confident that the United Kingdom will ultimately be convinced that, if it desires to develop its relations with Spain to their full potential, it cannot continue to maintain a colonial presence in Spanish territory."

## D. Anglo-Spanish negotiations

69. No meetings were held within the negotiating process established by the Brussels joint communiqué of 27 November 1984 during the period under review. It will be recalled that, according to the communiqué, the Ministers for Foreign Affairs of Spain and of the United Kingdom agreed to hold annual meetings alternately in each capital with the objective of reaching a definitive solution to the problem of Gibraltar. The last meeting indicated as being held within the Brussels framework was on 10 December 1997.

70. It will be recalled that, during the last meeting held under the Brussels process, on 10 December 1997, the Spanish Minister for Foreign Affairs made a formal offer to the United Kingdom Government regarding a future status for Gibraltar, whereby the Territory would come under Spanish sovereignty, yet retain a large degree of local political and administrative autonomy (see A/AC.109/2112, para. 72). The Government of the United Kingdom has not formally responded to the proposal.

## E. Anglo-Gibraltarian discussions

71. During the period under review, there were regular meetings and discussions between the United Kingdom and Gibraltarian ministers and officials. Those discussions included talks on the modernization of Gibraltar's Constitution. In that regard, Mr. Caruana stated the following during an address to the Royal Commonwealth Society on 21 July 1999:

> "[W]e are greatly encouraged by the reference in the British Government's recent White Paper on the Overseas Territories to modernization being the key to a new partnership between the United Kingdom and the Overseas Territories and expressing an openness and commitment to constitutional modernization and reform. Preliminary discussions in this respect have already been held with the British Government and last month our Parliament unanimously adopted a resolution setting up a Select Committee to review the Constitution and make recommendations on desirable reform thereof."

*Notes*

[1] Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, on 3 May 2000, as well as from the official documents of the Government of Spain.

[2] www.gibraltar.gov.gi.

[3] *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 23* (A/7623/Rev.1), vol. III, chap. XI, annex, paras. 7-23.

[4] www.gibraltar.gi/election.

[5] Report by the Foreign Affairs Committee, House of Commons, 8 June 1999, www. parliament.uk.

[6] *Reuters*, 19 April 2000; *El País*, 20 April 2000; *ABC*, 20 April 2000.

[7] "Partnership for Progress and Prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1, annex.

[8] European Commission statement IP/99/439, 2 July 1999.

[9] *Gibraltar Chronicle*, 3 November 1999.

[10] Ibid., 29 November 1999.

[11] Ibid., 10 December 1999.

[12] www.gibraltar.gov.gi.

[13] *Gibraltar Chronicle*, 29 November 1999.

[14] Ibid., 2 September 1999.

[15] A/54/23 (Part II), chap. IX, paras. 66-72.

[16] See A/C.4/54/SR.4.

[17] See A/C.4/54/SR.6.

[18] See A/C.4/54/L.4.

[19] See A/C.4/54/SR.7.

[20] See A/54/PV.71.

[21] To the statement of the representative of Spain (para. 67 below); see A/54/PV.7.

[22] See A/C.4/54/SR.6.

[23] See A/C.4/54/SR.4.

[24] See A/54/PV.7.